

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

INDUSTRIA DE ALIMENTOS ZENÚ S.A.S.

Plaintiff/Counter Defendant,

v.

LATINFOOD U.S. CORP. d/b/a ZENÚ
PRODUCTS CO. and WILSON ZULUAGA,

Defendants/Counter Claimants/
Third Party Plaintiffs,

v.

CORDIALSA USA, INC.

Third Party Defendant.

Civil Action No. 2:16-cv-06576-KM-MAH

STIPULATION

The Parties, by and through their undersigned counsel, hereby agree and stipulate to the following:

WHEREAS, plaintiff Industria de Alimentos Zenú S.A.S. ("Plaintiff") holds the following copyright registrations: "Zenu Chorizo Mediano," Registration No. VA 2-023-767 (Am. Compl., Exhibit B); "Zenu Chorizo con Ternera," Registration No. VA 2-026-703 (Am. Compl., Exhibit C); "Zenu Chorizo Pequeno," Registration No. VA 2-026-710 (Am. Compl., Exhibit D); and "Zenu Chile Con Carne de Res," Registration No. VA 2-026-672 (Am. Compl., Exhibit E) (collectively, the "Copyrighted Labels");

WHEREAS, Plaintiff has alleged in their Amended Complaint (ECF No. 60) that defendants Latinfood U.S. Corp. d/b/a Zenú Products Co. and Wilson Zuluaga ("Defendants") have used packaging that infringes upon Plaintiff's Copyrighted Labels;

WHEREAS, Defendants deny any allegations that Defendants' product packaging infringes upon Plaintiff's Copyrighted Labels and Defendants do not admit to the validity of Plaintiff's Copyright Labels;

WHEREAS, Plaintiff filed a motion for preliminary injunction on July 18, 2017 (ECF No. 49) seeking to enjoin Defendants from using the labels featured on Defendants' website for their Chorizo con Ternera, Chorizo Colombiano, Pinto Beans, Dark Red Kidney Beans and Black Beans products;

WHEREAS, Defendants filed an opposition to Plaintiff's preliminary injunction on August 7, 2017 (*see* ECF No. 54) whereby, Mr. Zuluaga declared that Defendants have implemented a new replacement ZENÚ® logo and label design on its line of products (including their Chorizo con Ternera) and have discontinued their line of canned bean products and Chorizo Colombiano (*see* ECF No. 54-2);

WHEREAS, Defendants have represented that they no longer have any inventory of the their Chorizo Colombiano, Pinto Beans, Dark Red Kidney Beans and Black Beans products and that, to the best of their knowledge, those products are no longer available for sale at markets;

WHEREAS, Defendants have represented that they no longer have any inventory of Chorizo con Ternera in the packaging subject to Plaintiff's preliminary injunction motion and, to the best of their knowledge, represent that a small number of cases remain available for sale at markets which will be sold in short order;

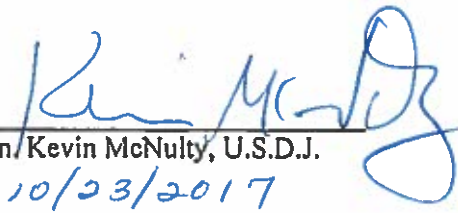
WHEREAS, Mr. Zuluaga's declaration and Defendants' recent representations render Plaintiff's preliminary injunction motion moot because the allegedly infringing labels are no longer being used by Defendants and Defendants are no longer distributing or selling any products with the packaging and labelling complained of in the motion.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys, as follows:

1. The Preliminary Injunction Motion filed by Plaintiff on July 18, 2017 is withdrawn;
2. Without any admission of fault, Defendants agree that they are not now and will no longer use, market, distribute or sell any products employing the Chorizo con Ternera, Chorizo Colombiano, Pinto Beans, Dark Red Kidney Beans and Black Beans labels featured in Plaintiff's preliminary injunction motion, or use, market or sell any labels that are substantially similar;
3. Defendants will use their best efforts to promptly exhaust any inventory bearing its old and allegedly infringing labels from the market;
4. Plaintiff reserves and does not waive any and all rights to seek future injunctive relief and/or damages should Defendants use, market or sell packaging that allegedly infringes any of the Copyrighted Labels, including any and all rights with respect to Defendants' new replacement packaging, but not including old inventory of Defendants' ZENÚ® products that may still be in the market;
5. Defendants reserve and do not waive any and all rights to any defenses which they may assert in any action commenced by Plaintiff in the future; and
6. This Stipulation may be executed in counterparts and that facsimile or electronic signatures to this Stipulation shall have the same force and effect as original signatures.

WHEREFORE, the Parties respectfully request that this Honorable Court endorse this Joint Stipulation and instruct the Clerk of the Court to update the docket accordingly.

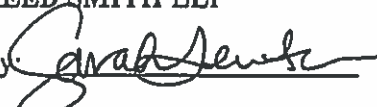
SO ORDERED:


Hon/ Kevin McNulty, U.S.D.J.
10/23/2017

The undersigned hereby STIPULATE and AGREE
to the form and entry of this Order:

Dated: October 20, 2017

REED SMITH LLP

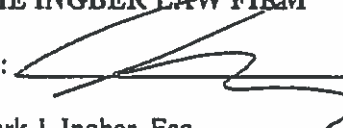
By: 

Peter D. Raymond, Esq. (pro hac vice)
Sarah Levitan, Esq.
599 Lexington Avenue
New York, New York 10022
Tel: (212) 521-5400
Fax: (212) 521-5450

Tracy Zurzolo Quinn, Esq.
Princeton Forrestal Village
136 Main Street, Suite 250
Princeton, NJ 08540
Tel: (609) 987-0050
Fax: (609) 951-0824

Attorneys for
Industria de Alimentos Zenú S.A.S.

THE INGBER LAW FIRM

By: 

Mark J. Ingber, Esq.
Schoolhouse Plaza
374 Millburn Avenue, Suite 301
Millburn, New Jersey 07041
Tel: (973) 921-0080
Fax: (973) 921-0021

Attorneys for
Latinfood U.S. Corp. d/b/a
Zenú Products Co. and Wilson Zuluaga